IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12-4-2006

Coram:

The Honourable Mr. Justice T.V. MASILAMANI

C.R.P. (PD) No.1328 of 2003
and
C.M.P.No.9283 of 2003

1. G.Kannabiran
2. G.Munuswamy .. Petitioners/Plaintiffs

vs.

1. Raniammal
2. Pandian .. Respondents/Defendants

Civil Revision Petition filed under Section 115 C.P.C. against the fair and decretal orders dated 13.3.2003 made in I.A.No.104 of 2003 in O.S.No.11 of 1994 on the file of the Principal District Munsif, Gingee.

For Petitioners : Mr.T.Dhanasekaran,
For Mr.N.Maninarayanan

For Respondents : Mr.P.Srinivas

...

O R D E R

The revision petitioners/plaintiffs have come forward with this revision challenging the impugned order in I.A.No.104 of 2003 in O.S.No.11 of 1994 dated 13.3.2003 on the file of the Principal District Munsif, Ginjee.

2. The revision petitioners filed the said petition to implead the first petitioner's son who had purchased the undivided right and interest of the second petitioner in the suit property by means of a registered sale deed dated 30.10.1995. The respondents/defendants resisted the said petition by filing a counter therein. They have resisted the impleading of a third party as he is neither a proper person nor a necessary party to adjudicate the dispute between the petitioners and the respondents in the suit. Hence, learned District Munsif having considered the rival submissions made by both sides in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the light of the records of the case arrived at the conclusion that the proposed party is not a necessary party to the suit and therefore dismissed the petition. Hence, the revision.

3. Heard Mr.N.Maninaraynan, learned counsel for the revision petitioners and Mr.P.Srinivas, learned counsel appearing for the respondents.

4. It is not in controversy that the revision petitioners/plaintiffs filed the suit for declaration that the well existing in the 'A schedule property belonged exclusively to them and for permanent injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the said well by the plaintiffs, for mandatory injunction directing the defendants to remove the oil engine and pump set from the well and also directing them to close the channel put up by the defendants in the suit property. In the above circumstances, learned counsel for the revision petitioners has argued that even though the second petitioner herein had parted away with his right, title and the interest in the suit property in favour of the first petitioner's son and therefore the purchaser was sought to be impleaded as a necessary party.

5. Learned counsel for the revision petitioners has argued vehemently that in view of the subsequent events and taking into consideration that the second petitioner had alienated his entire right and title in respect of his share in the suit property in favour of the first petitioner's son, he is absolutely entitled to such share in the suit property and that therefore he becomes a necessary party to the suit for effective adjudication of the dispute between the parties. Hence, he has urged that impugned order of the court below has to be set aside and the revision allowed as prayed for.

6. In answer to such contention, learned counsel for the respondents has relied on the decisionAMIT KUMAR SHAW v. FARIDA KHATOON (AIR 2005 S.C. 2209) rendered by the Honourable Supreme Court in support of his contention that the transferee *pendente lite* can be added as a proper party as his interest in the subject matter of the suit is substantial. Similarly, he has also relied on the decision SOMASUNDRAM CHETTIAR v. BALASUBRAMANIAN (1998 (2) M.L.J. 562), S.G.KANNAPPAN v. S.MURUGESAN (2001 (4) C.T.C. 730) and CHITHRA v. MUTHUPERUMAL (2001 (3) M.L.J.265) rendered by this Court in support of the same proposition of law. In the above said decisions, this Court held that the transferee *pendente lite* who has got the nexus to the suit claim or suit property is a necessary party to the proceedings.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. It is no doubt true that even though the transfer of the second petitioner's right, title and interest in the suit property took place as early as 30.10.1995 one year subsequent to the filing of the suit, the revision petitioners have come forward with the petition to implead the transferee eight years later in 2003 and therefore there had been considerable delay in filing the petition even though the petitioners had the knowledge of such alienation.

8. As has been rightly argued by the learned counsel for the revision petitioners, delay is not the only criteria to deny the opportunity to implead the subsequent transferee of the undivided share of the second petitioner in the suit property and therefore this Court is of the considered view that in the light of the ratio laid down in the decisions referred to above, the subsequent transferee is also a proper party to the proceedings to adjudicate upon the dispute between the parties in entirety.

9. However, since the petitioners filed the petition after considerable delay, they may be suitably directed to pay costs of Rs.2,500/- to the Conciliation and Mediation Centre, High Court, Madras within two weeks from the date of receipt of a copy of this order as a precondition to allow the revision failing which the revision petition shall stand dismissed automatically without any further reference to this Court.

10. For the aforesaid reasons, the Civil Revision Petition is ordered as indicated above. Consequently, C.M.P.No.9283 of 2003 is closed.

12-4-2006

dpp

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Principal District Munsif, Gingee.

1 cc to Mr.P.Srinivas, Advocate, SR.18208

mf (co)
dv/21.4.06

Order in
C.R.P.(PD)No.1328 of 2003;&
C.M.P.No.9283 of 2003

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/